

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DALE C. JOHNSON and U.S. POSTAL SERVICE,
POST OFFICE, Denver, CO

*Docket No. 01-911; Submitted on the Record;
Issued November 16, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether appellant established that the employee's death on October 31, 1998 was causally related to the accepted employment injuries.

The Board finds that, due to a conflict in the medical evidence, this case is not in posture for decision.

Appellant has the burden of proving by the weight of the reliable, probative and substantial evidence that the employee's death was causally related to his employment.¹ This burden includes the necessity of furnishing rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.²

In August 1998 the Office of Workers' Compensation Programs accepted that the employee, then a 49-year-old distribution clerk, sustained right carpal tunnel syndrome, right wrist tendinitis and right epicondylitis. The Office authorized surgery and on October 28, 1998 the employee underwent a right carpal tunnel release, right radial nerve decompression at the elbow and right lateral elbow fasciotomy. On October 29, 1998 the employee sustained a right cerebral stroke at home and on October 31, 1998 he passed away.³

Appellant, the employee's widow, filed a claim alleging that the employee died as a result of complications related to his employment-related surgery on October 28, 1998.

¹ *Carolyn P. Spiewak (Paul Spiewak)*, 40 ECAB 552, 560 (1989); *Lorraine E. Lambert (Arthur R. Lambert)*, 33 ECAB 1111, 1120 (1982).

² *Martha A. Whitson (Joe E. Whitson)*, 43 ECAB 1176, 1180 (1992).

³ The employee's death certificate listed "cerebrovascular accident" as the immediate cause of death.

By decision dated July 26, 1999, the Office denied appellant's claim on the grounds that she did not submit medical evidence establishing that the employee's death was employment related. By decisions dated February 16 and October 20, 2000 and January 16, 2001, the Office affirmed its prior decisions.

Section 8123(a) of the Federal Employees' Compensation Act provides in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."⁴ When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of the Act, to resolve the conflict in the medical evidence.⁵

In a report dated October 16, 2000, the Office medical adviser determined that the medical evidence did not show that the employee's death on October 31, 1998 was due to his employment-related surgery on October 28, 1998. The Office medical adviser indicated that a standard tourniquet was placed on the employee's arm during the surgery and that the employee had no prior history of hypertension, clotting disorders, heart murmurs, or neck trauma. After the employee's stroke, the contrast echocardiogram showed no evidence of blood clots in the heart, no intracardiac shunts and no vascular disease.

The Office medical adviser stated: "This information points away from any blood clots which might have formed in the lower right arm at surgery." He noted that the employee's blood pressure was normal during and after the surgery. The Office medical adviser stated that if a blood clot had formed in the employee's right arm during surgery there had to be a way for it to travel to the right heart, then to the left heart and then to the right side of the brain. He stated that this could not happen unless there was a hole or "shunt" in the heart.

In contrast, the employee's physicians provided opinions indicating that the death of the employee was related to his surgery on October 28, 1998. In a report dated November 27, 2000, Dr. Bennett I. Machanic, a Board-certified neurologist, discussed appellant's risk factors for stroke, including obesity and a history of cigarette smoking. Dr. Machanic stated:

"I believe there is compelling indication, in view of the sequence of events, that during his surgery the day before he developed a focal thrombosis at a distance from the cerebral circulation. It is likely this was secondary to a tendency, preoperatively, toward being hypercoagulable and the presence of areas of atherosclerosis predisposing toward local thrombosis. The next day, when up and about, his activity resulted in mobilization of a fresh thrombus which embolized to the right cerebral circulation. Therefore, there is no question in my mind that there is a rather logical sequence of events. The surgery and the anesthesia predisposed this man to focal thrombosis, subsequent embolism and unfortunate

⁴ 5 U.S.C. § 8123(a).

⁵ *William C. Bush*, 40 ECAB 1064, 1975 (1989).

catastrophic complications which resulted in eventual cerebral herniation and death.”⁶

Moreover, Dr. Daniel S. Bennett, a Board-certified anesthesiologist, determined in a report dated August 17, 2000 that the employee suffered a fatal stroke due to his surgery on October 28, 1998. Dr. Bennett noted that the employee’s risk factors of obesity and a history of smoking, as well as a tourniquet time exceeding 30 to 45 minutes, increased the chance that he would suffer an embolic stroke related to the surgery. In a report dated December 8, 1999, Dr. Charles I. Zucker, an attending family practitioner, stated that the employee’s death was related to a blood clot, which was caused by the anesthesia used during the surgery on October 28, 1998.

Consequently, the case must be referred to an impartial medical specialist to resolve the conflict in the medical opinion evidence between the Office medical adviser and the employee’s physicians regarding whether the employee’s death on October 31, 1998 was related to his employment. On remand the Office should refer the case file and the statement of accepted facts, to an appropriate specialist for an impartial medical evaluation and report including a rationalized opinion on this matter. After such further development as the Office deems necessary, the Office should issue an appropriate decision regarding appellant’s death benefits claim.

The January 16, 2001 and October 20, 2000 decisions of the Office of Workers’ Compensation Programs are set aside and the case is remanded to the Office for further proceedings consistent with this decision.

Dated, Washington, DC
November 16, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member

⁶ In an undated supplemental report, the Office medical adviser stated that the November 27, 2000 report of Dr. Machanic did not change his opinion on the cause of the employee’s death. The Office medical adviser asserted that the employee’s history did not show that he had any special predisposition for suffering blood clotting or a cerebral stroke.